Exhibit B

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

JEANICE FARLEY, individually and
on behalf of MICHAEL FARLEY, an
incompetent adult; GEORGE FARLEY;
JAMES FARLEY; and KIMBERLY—RAE FARLEY,
Plaintiffs,
vs. NO. 1:13—CV—261
UNITED STATES OF AMERICA,
Defendant.

APPEARANCES:

JAMAL ALSAFFAR, ESQ.
(Appearing by Videoteleconference)
Whitehurst, Harkins, Brees,
Cheng, Alsaffar & Higginbothan
5113 Southwest Pky, Ste. 150 FOR THE PLAINTIFFS
Austin, TX 78735
512.476.4346

DAVID PLOURDE, ESQ.
Assistant U.S. Attorney
53 Pleasant St., 4th Floor FOR THE DEFENDANT
Concord, N.H. 03301
603.230.2531

ALSO PRESENT: Shawn Budd,
Budd Legal Video

TRIAL TESTIMONY OF **ANTHONY F. MILANO, MD**, called as a witness by and on behalf of the Defendant, taken pursuant to the Federal Rules of Civil Procedure, before Paula E. Hogan, Notary Public in and for the Commonwealth of Massachusetts; taken at Doubletree Inn, 287 Route 28, Hyannis, MA, on Thursday, September 18, 2014, commencing at 9:15 a.m.

I N D E X

DEPONENT: ANTHONY F. MILANO, MD

E X H I B I T S

STIPULATION

IT IS HEREBY STIPULATED AND AGREED by and between counsel for the respective parties that the deposition is being taken pursuant to the Federal Rules of Civil Procedure, to be used for Trial purposes.

The deponent produced a Massachusetts license for purposes of identification.

The deponent will read and sign the deposition, waiving the presence of a Notary. If the deposition is not signed within 30 days of receipt, pursuant to Massachusetts Civil Practice, Section 460, the privilege will be deemed waived.

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ANTHONY F. MILANO, MD,

having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. PLOURDE:

Q. Doctor, would you state your name for the record, please?

A. My name is Anthony Milano.

Q. Doctor, you have agreed to appear today for a deposition that will be submitted at trial in

and calculate a life expectancy. And each of the illnesses in a person's category of illnesses carry their own extra mortality burden. And for instance, at age 60, in the United States Decennial Tables, the average life expectancy for a group of white males is 19.9 years, additional years of life.

On the other hand, a person with the identical mathematical risk burden gone from very major impairments or disabilities or risk factors would have far more, certainly more deaths per thousand than 12.1 deaths per thousand, which is the normal standard for a group of white males at age 60 in the United States Decennial Tables.

Q. Do I understand you correctly, and don't let me put words in your mouth, as I understand it, what you're saying is that the general life tables established for a person of the age of 60, which was Mr. Farley's age at the time this incident occurred, American white males at the age of 60 under the general tables will have a general life expectancy of approximately 19.9 years?

A. In the United States Decennial Tables, based on the census that was taken from 1999 to 2001, basically the 2000 census, you are correct. There

are about 12.1 deaths per thousand in the white, American male population.

Q. So, when you examine the medical records, you're trying to identify specific health risks or conditions that a particular individual has that might somehow affect the general life expectancy level, is that correct?

A. Yes.

Q. All right. I didn't mean to —— can you continue to explain exactly what your methodology is?

A. Well, then simply put, we sum —— the convention in the insurance industry by and large is to sum the extra mortality for each of the illnesses and risk factors and come up, determine a total extra mortality burden mathematically for a group of people, in this case with the identical risk factors that Mr. Farley contained, and compare that extra mortality burden with the mortality in a group of 60—year—old white males in the general population who obviously don't have this mortality burden. There's only 12.1 deaths per thousand in age 61 in those 1990 United States Decennial Tables. And we do a simple comparison. And that's basically the theme of the work that we do, is to do a comparison of a group of

rate sum of 253 deaths per thousand, starting at age 60. And you can see right away looking at the United States Decennial Tables, that is a huge, enormous mortality compared to a group compared by age, sex and race, starting at age 60 that would only have 12 deaths a thousand in the United States Decennial Tables.

Q. All right. Before we get into more detail with respect to your analysis of Mr. Farley's specific circumstances, I'm still trying to get a picture of the process that you're following. So, you come up with the excessive death rate. What do you do once you have that amount?

A. Once I have a medical risk profile completed, I am then ready to insert into a computer program that looks almost precisely the same that will construct a life table that looks almost precisely the same as a life table that is published by the United States Department of Health and Human Services. These are called the United States Decennial Tables.

The most recent Decennial Tables for the 2000 census was not published until August 5, 2008, because it takes quite a few years to collate all the

tracheostomy or indeed had ventilatory support.

Q. All right. So, can you briefly describe what it is you did with each of these health risk factors?

A. After I determined the extra mortality burden of each of the major risk factors, in table 1 of his multiple risk factor profile, I then inserted the summed excess death rate, the EDR decimal values into a life table for the calculation of life expectancy.

Q. And can you tell us what you relied on in coming up with the excess death rate with respect to each of these impairments?

A. Yes. For his first impairment, I relied on the report from the National Institutes of Health and the Framingham study and Boston University, which outlined the excess death rate outcomes and made up by sex in males and females and by age and by health status and by duration of disease. So, I used that, those data from the National Institutes of Health because it came closest and was more accurate than any other data that I could find.

Indeed in the most recent paper that I read in the Journal of American Heart Association

A. Well, let's see. Oh, at the time I received this case, his current age or age near his birthday was 60 years old. And so, I calculated —— and this is on page 1 of my report.

Q. So, your life expectancy analysis is based on Mr. Farley currently being 60 years of age, essentially at the time this report was prepared?

A. Yes.

Q. Doctor, you mentioned that you issue these, your opinions regarding the reduction in Mr. Farley's life expectancy as being based on reasonable medical probability. As I understand the process that you followed, in addition to identifying the risk factors, you had to mathematically calculate or convert the excess mortality rates so that they could be compared with the general Decennial Tables regarding regular life expectancy, is that correct?

A. Yes.

Q. I assume that there's not a hundred percent efficiency in those calculations —— well, strike that. I assume that your conclusion regarding Mr. Farley's life expectancy of being 3.32 years ——

A. 3.22.

Q. —— 3.22 years from the age of 60, is that

a definitive statement of how much longer he has to live?

A. No. That is an average. Remember the definition of life expectancy. Life expectancy again is defined as the average number of years. The word, and I'll go on in a moment, but the word average is a word that is a measure of central tendency of a group of numbers; like the median and the mode and the average are all measures of central tendency; what do these numbers tend to focus on.

So, again, life expectancy is the average number of years lived by a group of people starting from some attained age —— in this case age 60 for Mr. Farley —— until all, and that is the operative word, have died. So, it is an average. But on each side of the average, people die.

And if we were to notice on table 2 —— I don't know if you can tell from this, but let me see. Well, that's his average life expectancy. We all hope —— let me answer your question this way. We all hope that Mr. Farley would live let us say to be, to a long, much longer life span. I like to say live to a hundred years old. But not —— it's very, very doubtful, this is a probability that he's not going

to come anywhere near that. But some people die before the average age and some people die after the average age.

But, nevertheless, in this statistical analysis, based on the data given, we have a 95 percent confidence interval of probability that this will happen 95 percent of the time to men, white males, with the exact mortality burden mathematically expressed as excess death rates summed as Mr. Farley. So, it's a good probability, but he may live a few years longer. And I'm sure that we all hope he does.

Even Dr. Singer called it an estimated —— in his very last paper —— an estimated probability. Because indeed that's all that it was ever meant to be.

Q. Is it fair to say that as a result of your analysis, even if the reduction that you calculated in his life expectancy is essentially, is an estimate?

A. It's an estimated probability. You must use those two words.

Q. Okay.

A. It's an estimated probability. And the reason you must use two words, the word probability,

and he will be able to do that. Okay?

A. Yes, sir.

Q. Okay. Dr. Milano, let's start at the very beginning, and that's your experience as an expert witness.

MR. PLOURDE: You're breaking up.

Q. Dr. Milano, it's true that every —— can you hear me okay?

MR. PLOURDE: With difficulty. You're breaking up. But go ahead.

MR. ALSAFFAR: Really? Okay. Let me try it again. Can you hear me, Dr. Milano?

THE WITNESS: Yes, but you do break up though.

Q. Dr. Milano, every time that you had testified as an expert witness on life expectancy, it's been exclusively for the defendant, correct?

A. Yes.

Q. And it's a fair statement that in all those times you've testified exclusively as a defendant expert witness that you were testifying that the plaintiff had a life expectancy less than what was shown by the United States Decennial Life Tables, is that true?

A. Yes.

Q. And it's also true and in cases in which you've testified as a life expectancy expert, not only have they all been for the defendant, but a vast majority of those have been for the United States of America as a defendant witness, is that correct?

A. Yes.

Q. Okay. In the work that you have done as a retained expert witness in legal cases, in addition to being exclusively an expert for the defense and almost exclusively an expert for the United States, you've only served as a testifying expert witness in medical malpractice defense cases, is that correct?

A. Yes.

Q. Okay.

A. Sometimes they call medical malpractice by other names, like negligence or wrongful death. But I think they were basically malpractice cases.

Q. Okay. Now, you have also opened your life expectancy expert witness service business —— and for the record, I don't think Mr. Plourde asked you this so I want to make sure the court understands. In about 2000 or 2001, you opened this business for the purpose of serving as an expert in life expectancy,

is that right?

A. I was asked to provide expert opinions, but I did not have a personal business until I left the, I think, Aviva Life Company, which would have been around 2007 or 2008; 2008, I think. I did not incorporate myself until around then.

Q. And when did you incorporate the business that's entitled Milano Life Expectancy Services, Inc.?

A. Sometime between 2005 and 2008, but I don't exactly recall.

Q. And you have been in business, that's the business you use that's exclusively for testifying as a defense expert on life expectancy, correct?

A. No, not exactly. I provide expert services not only to the legal profession, but also to the indemnity world and to the legal profession.

Q. Okay. And when you say the indemnity world you provide services, you're talking about the insurance industry, correct?

A. Yes.

Q. Now, let me ask you a little bit more about your relationship with the United States as a defendant specifically. Now, you have been asked by

United States Attorneys to speak at CLEs that have been put on by United States Attorneys for defense of malpractice cases, correct?

A. Yes.

Q. In other words, you've been invited by United States Attorneys to speak at legal seminars where United States Attorneys are attempting to learn about defending cases, correct?

A. Yes.

Q. All right. And in fact, you have previously listed in your CVs that you developed as a life expectancy doctor, in your CVs, you have listed multiple U.S. Attorneys as references in your CV, correct?

MR. PLOURDE: Do you need to look at the exhibits?

THE WITNESS: Yes.

MR. PLOURDE: Do you have your CV in front of you, exhibit 1?

MR. ALSAFFAR: I believe he answered the question. That's a different exhibit, David. That's not the one I was referring to.

A. I think you may mean in another venue that's an online legal venue that years and years

ago, but I can't remember the name of it even —— I just don't remember the name of it. It was years ago.

Q. Doctor, you're talking about a legal venue in which you were invited by United States Attorneys to come speak to them about defending cases against the government, correct, is that what you're talking about?

A. Yes, that's correct, yes.

Q. Okay. And my question was you have also in resumes' and CVs that you have prepared you have listed United States Attorneys as references, as expert witness references for people to contact about your life expectancy expertise, is that correct?

A. I think that's correct.

Q. Okay. And in your —— let me go back to your current CV. And that's the one you should have in front of you, that I believe was marked exhibit number 1. If you look at that, that current CV, you list as one of the seminars that you spoke at for the United States Attorneys seminar, the topic was "Using Damages Expert Witnesses Effectively in Catastrophic Cases," is that correct?

A. Yes.

Q. And in this, Mr. Farley's case that you're involved in today, this is a catastrophic injury case, is it not?

A. Yes.

Q. And in addition to speaking at a couple of United States Attorneys' seminars, you've also published with the United States Attorney an article in the United States Attorneys' bulletin about serving as an expert witness on life expectancy, is that correct?

A. Yes.

Q. All right. And I'm going to pull up that bulletin for you. You may have a recollection because we discussed it recently, but if you need to look, I'm pulling it up right now. We've marked this, and this is going to be marked as exhibit 19 to your deposition today. So, exhibit 19, you should be able to see it on your screen.

(Whereupon, the document referred to by counsel was duly marked for identification as Exhibit #19.)

BY MR. ALSAFFAR:

Q. Okay. I'm going to try to reload the document, but I think we can talk about it even if

it's up there because we identified it in the prior deposition.

(A brief recess was taken.)

BY MR. ALSAFFAR:

Q. Dr. Milano, are you ready?

A. Yes.

Q. Okay. We were talking about what will be exhibit 19 on this deposition. This is the bulletin in which you published an article. And it's the United States Attorneys' bulletin, is that correct?

A. Yes.

Q. Okay. And in that article that you authored and published for the United States Attorneys, you stated that the power of using life expectancy testimony to limit by thousands if not millions of dollars, economic damages in medical malpractice tort cases. That's your language, correct?

A. Yes.

Q. And this bulletin that you wrote, you co-wrote it with a United States Attorney in North Carolina, is that correct?

A. Yes.

Q. And this was a bulletin that went out to

tables for data from 1999 to 2001, is that correct?

A. Yes.

Q. And it was specifically pulled from the table of white male population death rates from 1999 to 2001, did I get that right?

A. Yes.

Q. I'm sorry, did I get that right?

A. Yes, sir.

Q. I just didn't hear you. And so, what you did was you went to that table in the 1999 to 2000 period Decennial Tables, you went to the age 59 to 60, you ran your finger over —— I'm sorry, 60 to 61, ran your finger over and we get 19.9 expectation of life, correct?

A. Yes.

Q. I just wanted to make sure the court understands exactly how you did that. Now, would you agree, Doctor, I think you'll agree with me, wouldn't you, that as a general rule, medically speaking and statistically speaking that life expectancies have been getting better in terms of length every few years, correct?

A. Yes.

Q. In fact, the same organizations, the U.S.

Department of Health and Human Services, the National Vital Statistic Reports, the same organization that published the 1999 to 2001 data that you relied on also publishes death data as well, correct?

A. Yes.

Q. All right. And I want to see if I can pull this up because I want you to see what I'm looking at. We've marked this deposition exhibit number 7 for this second deposition. And give it a second and let's hope it'll pull up here. It's loading. Tell me whenever you can see it on your screen and we'll go from there. It should be popping up on your screen in a second.

A. It has popped up.

(Whereupon, the document referred to by counsel was duly marked for identification as Exhibit #7.)

BY MR. ALSAFFAR:

Q. So, exhibit number 7, Doctor, is the Deaths: Final Data for 2007. Let's start there, 2007. So this is about six years after the data from your table. And if you look on the very first page, start with the first page there — let me scroll up just a little bit. Okay. If you look under Results,

on the very first page, if you look under Results on the very first page of the death tables for 2007, published by the CDC, it says that the age adjusted death rate was 760.2 deaths per one hundred thousand standard population, a decrease of 2.1 percent from the 2006 rate and a record low historical figure, is that correct?

A. Yes. I can barely see it, but I think you're correct.

Q. Well, let me do this. Let me help you out a little bit. Is that better?

A. Well, no.

Q. Is that better?

A. No. It hasn't changed at all.

Q. Okay. And what that means is that just from 2006 to 2007, the over all population death rate had decreased, meaning — that's what that means, correct?

A. Yes.

Q. And the CDC's table goes on to say that life expectancy at birth rose .2 year, from a 2006 value of 77.7 years to a record 77.9 in 2007, correct?

A. Yes.

Q. And what it goes on to say is that age specific death rates decreased for most age groups, including the age group Mr. Farley's in, the 55 to 64 age group, is that correct?

A. Yes.

Q. And what that means is that people are living longer in 2007 compared to 2006, correct?

A. Yes.

Q. All right. And one of the reasons — I mean, there's a lot of reasons, but is it true, would you agree that one of the reasons that people live longer is due to advances in medical care once you get to a certain age, correct?

A. That is one of the reasons, but not a very large reason.

Q. Okay. And let's look at — the CDC also, what they did was they followed this study up in 2014, I believe — let me double check — yeah, 2013, the CDC updated this table that I just showed you with death data for 2010. And I'm uploading that to your computer right now so just give it a second and tell me when you see it on your screen.

A. I see, Deaths: Final Data for 2010.

Q. And just like with the —

MR. ALSAFFAR: This is marked exhibit number 6.

(Whereupon, the document referred to by counsel was duly marked for identification as Exhibit #6.)

BY MR. ALSAFFAR:

Q. And just like with the prior table I just showed you, this table again is published by National Vital Statistics Reports, which is the U.S. Department of Health and Human Services, the same governmental organization that published your tables that you relied on from 1999 to 2001, correct?

A. Yes.

Q. Is that correct?

A. Yes.

Q. Thank you. I'm sorry, I know you probably answered, I just had a little hard time hearing.

MR. PLOURDE: The problem is the computer is further away from the phone from where he was originally sitting.

Q. Okay. Doctor, I'm showing you exhibit number 6, which is the death data for 2010, which is the update, 2010 update of the document I just showed you from 2007. Is that how you understand it?

A. Yes.

Q. Okay. Now, if you go down to the Results section, it says that the age adjusted death was 747.0 deaths per 100,000 standard population, lower than the 2009 rate and a record low rate. Do you see that?

A. Yes.

Q. So, in other words, in 2010, we have yet another record low rate of deaths for the U.S. population, correct?

A. Yes.

Q. So, the table goes on to say that life expectancy at birth rose .2 year, from 78.5 years in 2009 to a record high of 78.7 in 2010. Do you see that?

A. Yes.

Q. All right. So, again, what we have here is the 2010 population data from the United States shows that once again, life expectancy is increasing from 2007 to 2008 to 2009, 2010, correct?

A. Yes.

Q. Is that right?

A. Yes.

MR. PLOURDE: Did you get it? Yes.

MR. ALSAFFAR: Yes, thank you.

Q. Now, I'm going to show you the next page of this table, exhibit number 6. Okay. If you look under Trends, the CDC states that in 2010, life expectancy increased for the total population as well as for the black and white populations, both black —— both white and black male and female populations experienced an increase in life expectancy in 2010 over 2009, is that correct?

A. I think you're correct, but I can't see it on this monitor. I know the life expectancy has increased. But the page did not transition to whatever page has Trends on it.

MR. PLOURDE: We still are visualizing the first page of this.

MR. ALSAFFAR: Okay. Let me do this. Let me try this again. Tell me when you see it in front of you.

Q. While we're waiting for the document to pull up, Dr. Milano, would you agree that —— and again, we're talking about 2010 —— that the rates for the two leading causes of death in this United States, heart disease and cancer, continued their long—term decreasing trends?

A. Yes.

Q. Okay. Let me try to pull this up again. I might just need to reload a little bit.

MR. PLOURDE: The first document disappeared but now it's blank.

MR. ALSAFFAR: I closed it, David, and reloaded it. Sometimes that helps.

MR. PLOURDE: A document has just come up. But it's the same that was up before.

MR. ALSAFFAR: Right. It's page 1. I'm waiting for it to completely load and then I'll see if it works. And if it doesn't, we'll move on. That's okay. And I'm actually on page 3 of the National Vital Statistics Reports U.S. death tables of 2010. Is page 3 showing up on your screen?

A. No.

Q. Okay. Let me ask you a different question then. Do you agree that the pace of decline for age adjusted death rates during the last 10 years, and that would be from 2000 to 2010, has been faster than for the previous decades?

A. I think so.

Q. Okay.

MR. ALSAFFAR: Let me just close

this. Since we're having trouble with this particular document, we'll turn away from it for just a second.

MR. PLOURDE: For the record, I've got an objection to the use of the document to the extent that the Doctor is not able to visualize the portions that you're referring to.

MR. ALSAFFAR: For those questions, the last two questions, I just asked those generally. So, any questions that are about the document itself, I'll make sure that he can see it. But that's fine. I understand your objection.

MR. PLOURDE: Can we take a quick break?

MR. ALSAFFAR: Oh, yeah, absolutely.

(A brief recess was taken.)

BY MR. ALSAFFAR:

Q. Dr. Milano, don't apologize, stuff comes up. That's okay. Now, let's go back to what we were discussing before, and that's a little bit about your methodology. I want to go specifically to that. So, we just discussed the tables that you —— one of the places in which you started with your life expectancy opinion was the decennial 1999 to 2001 table. So, I

want to talk to you about what you used next. And in order to do that, I want to see if I have your methodology down, at least somewhat correctly, okay?

So, one of the things you did was you created —— you discerned what you felt to be seven individual risk factors that Mr. Farley had on his medical records, correct?

A. Yes.

Q. Okay. Then what you did is you summed up the death mortality for each one of those risk factors independently, correct?

A. Yes.

Q. Then you created a group of 60—year—old white males from the general population who you said had a, quote—unquote, normal life expectancy according to the decennial 1999 to 2001 figure, correct?

A. Yes.

Q. All right. So, let's talk about that first comparison group, this cohort of 60 white males from what you termed normal population. You determined based on doing that, looking up the table of 60—year—old white males in the 1999 to 2001 data that the starting life expectancy then was 19.9

years, correct?

A. Yes.

Q. Just so the court understands, that's the number you're going to be deducting from, right?

A. Yes.

Q. Now, in that group of 60-year-old white males pulled from the 1999 to 2001 data, did you determine in any way, shape or form how many of those white males in that group had some of Mr. Farley's risk factors as well?

A. No.

Q. In other words, you termed them normal population, but you don't know how many of that group that you're comparing Mr. Farley to already had some of the risk factors or any of the risk factors that Mr. Farley had, correct?

A. Yes.

Q. Now, presumably we know as a statistical and almost scientific certainty that this group of, quote-unquote, normal 60-year-old white males probably did have some of Mr. Farley's risk factors, correct?

A. It is possible.

Q. It's probable, isn't it, because they're

the group of population of 60—year—olds?

A. Well, I can't say that for sure.

Q. Okay. And the reason you can't ——

A. But it is possible.

Q. Go ahead.

A. Well, it is possible.

Q. Okay. And really, you don't know one way or another the answer to the question of this comparison group if they already had some of Mr. Farley's risk factors, right? You just don't know?

A. No. But what I do know is that the mortality rate for that group at age 60 is only 12.1 deaths a thousand, I think; as a group. And that's what we're comparing here. We're not comparing Mr. Farley by himself, but we are comparing a Farley cohort, quote—en quote, of a thousand people with the identical mathematical burden of mortality that Mr. Farley had. And so, that's what we are doing, is comparing one population with another, not a single person.

Q. All right.

MR. ALSAFFAR: I have to object as non responsive, Dr. Milano. This is the trial portion, so you need to answer just the question I

ask. Although I promise you we'll get to this Farley cohort in just a minute; which is a separate group.

Q. Please listen to the question I ask, let's answer that one and then let's move on to the one that you want to answer after that. Okay.

My question was this group of 60—year—old white males from the 1999 to 2001 population, the group you pulled the 19.9 from, you don't know one way or another whether men in that group had already some of those risk factors that Mr. Farley had, correct?

A. Correct.

Q. And just so the court understands, any time we're talking about a population group that you're pulling from a life table like the 1999 to 2001 table that you pulled the group from, that is all comers, do you know what that term means?

A. Yes.

Q. That means there are people with better health than Michael Farley in that group, there are also people with worse health in that group, including people who have died, correct?

A. Yes.

Q. Okay. Now, let's talk about the next step

you did. So, we've established how you got your 19.9 starting figure. We established that you looked at Mr. Farley and pulled out these seven major risk factors that you added up individually, have I got it right so far?

A. Yes.

Q. Then you created what you have tabbed a, quote—unquote, Farley cohort male group, correct?

A. Yes.

Q. Now, I believe my understanding of your wording is what you did was you created a cohort group of men that you think have identical risk factors as those to Mr. Farley, is that correct?

A. I would term it the mathematical burden of excess mortality identical to that of Mr. Farley.

Q. And so that the court understands what the Farley cohort group is, this is a fictional group of people, correct? It doesn't exist in the world, correct?

A. I would use the term virtual, not fictional.

Q. All right. Virtual, to me, means —— and tell me if this is how you understand it, but when I hear the word virtual in terms of like reality, what

that means to me is a fake reality trying to simulate a real thing, is that how you're using it?

A. Yes. We are using that mathematical burden of the Farley group to compare to a similar group by age, sex and race, in terms of a survival and a life expectancy outcome.

Q. Let me make sure the court understands what you did here. This group, Farley cohort group, this virtual reality group that you created — well, are you comfortable calling it a hypothetical group? Because I know you used that term before. Is that something you're comfortable calling it?

A. Yes.

Q. Okay. And the reason why it's okay to call it a hypothetical group or virtual reality group is because this group does not exist in reality, these aren't real people that you created, correct?

A. That's correct.

Q. And what you've done is this Farley cohort group is necessary, absolutely necessary for you to make the ultimate conclusion in your report that Mr. Farley's life expectancy is only 3.22 years, is that fair?

A. Yes.

Q. Without this hypothetical group that you created to compare to Mr. Farley, you would be unable to plug that into your computer program and get out the 3.22 year life expectancy opinion that you've given in this case, correct?

A. Yes.

Q. All right. Now, just so going —— I try to do 35,000 views every few questions. Okay? So that's what I'm doing right now. So that the court understands, you first —— we start with a 19.9 year life expectancy you pulled from data from 1999 to 2001, then you created the Farley cohort group to hypothetically and virtually simulate Mr. Farley's actual condition. And by doing that, you ultimately concluded that Mr. Farley life expectancy is probably reduced by 83.82 percent, is that correct?

A. Yes.

Q. So, let's dig into that a little more now. First of all, let's talk a little bit about the other life tables that are out there. And I understand you prefer the Decennial Tables, and you have explained in great detail today and in the prior deposition why you prefer those tables. But the same government institution, the U.S. Department of Health and Human

Services, CDC, National Vital Statistics Reports published other life tables that are more recent, even though you don't like using them, they're more recent data, correct?

A. Yes.

Q. And the ——

A. It's not that I don't like using them. It's that they shouldn't and must not be used in this context for the calculation of life expectancy. One should use the correct tables, which are the Decennial Tables. It's not a question of personal like or dislike.

Q. Right. And I understand that's your opinion and I understand that's what you do. And I understand that completely. My question was the same government organization publishes life tables that provide life expectancy with more recent data than the tables you used, right?

A. Yes.

Q. Okay. And if the court were to use the life tables from 2009 that the CDC and U.S. Department of Health and Human Services published in the year January, 2014, that starting number, that 19.9 starting number for white males age 60 would be

a couple years higher than your number, correct?

A. Could you repeat? I missed the first part of your question, of your statement.

Q. If we looked at the 2009 U.S. Life Tables that were published by the Department of Health and Human Services and CDC published them in January, 2014, the life expectancy for white males, if that number was the starting point for 60-year-old white males, the starting point number instead of being 19.9 years would be a couple years higher, correct?

A. Yes.

Q. Okay. And I want to go to the next step. We've talked about what you call the normal group. And we talked about this hypothetical Farley cohort. Now, I want to talk about that critical cohort that you've created to compare to Mr. Farley to reduce his life expectancy by 83 percent. Now, you did not rely on any studies of an actual person or group of people who had all seven of those major risk factors that you've identified Mr. Farley having, true?

A. True.

Q. All right. And you did not do any analysis to determine that there was any reduction required for overlap of these major risk factors that

you identified for Mr. Farley, is that true?

A. That is true. But there is more to this answer than you're allowing me.

Q. I understand. And Mr. Plourde can go into that. But my statement is true that you provided no reduction requiring —— let me rephrase it. My statement is true you did not do any analysis to determine if there was any reduction required for overlap of these major risk factors that you identified for Mr. Farley, correct?

A. Yes.

Q. Now, people who have cerebrovascular occlusive disease also often have cardiomyopathy, correct?

A. It is common. Yes.

Q. And people with cardiomyopathy and occlusive cerebrovascular disease can also have coronary heart disease, correct?

A. Yes.

Q. And people with coronary heart disease and cardiomyopathy also have hypertension often, correct?

A. Yes.

Q. And certainly people who have any long-term smoking problem, have cardiovascular disease,

hypertension and coronary heart disease, correct?

A. Yes.

Q. Now, I've heard you mention Dr. Singer several times during Mr. Plourde's questioning of you. And you called Dr. Singer a close colleague and close personal friend of yours, is that right?

A. Yes.

Q. And I understand that obviously we know that from your report, you cited Dr. Singer several times in supporting your opinion in this case, correct?

A. Yes.

Q. But Dr. Singer, back in one of, I believe in one of the several publications that you've listed in your report, he concluded himself that he often when he does these kind of life expectancy reports that he discounts the total excess death rate by as much as 20 percent or more to allow for overlap in multiple risk factors and future improvement in medical care with general reduction in mortality, is that correct?

THE WITNESS: May I see that, Mr. Plourde, that report of Dr. Singer that you have here?

said this would provide plaintiff attorneys a certain versimilitude which —— and then I'm paraphrasing a bit.

MR. ALSAFFAR: Dr. Milano ——

THE WITNESS: Yes.

MR. ALSAFFAR: I'm objecting to non responsive. Mr. Plourde will have a chance to ——

A. And the point is —— I'm sorry. Go ahead.

Q. It's okay. We're in the trial portion of it. It's okay. I want you to listen to my question. And I understand that you don't agree with Dr. Singer on this, I understand that. I really do. But my question is that the Singer reduction, the reduction, 20 percent reduction that Dr. Singer is talking about, the effect on life expectancy opinion when he applies the Singer reduction is to not lessen life expectancy but add a little bit to the life expectancy of a patient, is that fair?

A. Yes. He uses ——

Q. And I understand you don't agree with it. I'm not asking you why you don't agree with it, I'm just asking if that's what it is. Now, let me flip to a different topic.

I want to talk now about this Farley

cohort group, this hypothetical group that you created. There were no existing tables of life expectancy for a 60—year—old man with all of these seven risk factors that you assigned to Mr. Farley, is that correct?

A. Yes.

Q. And I believe that there's no peer reviewed study of a similar cohort group coming to conclusions regarding life expectancy for this hypothetical group that you created for this case, is that correct?

A. Yes.

Q. And Doctor, it's fair to say then that this Farley cohort group that you created was created entirely for the purpose of this particular litigation, this case, correct?

A. Yes.

Q. Now, I'm not sure if you talked about this with Mr. Plourde, but you remember that Framingham study that you referenced several times during your direct examination and that you cited in your report?

A. Yes.

Q. Now, that study was, if you look at your report, and the reference on page, I believe it's

page 25 of your report —— it's actually page 26. The Framingham study that you referenced several times in your report and in your testimony was actually published in 1990, is that correct?

A. Yes. Published by Lew and Gajewski in their 2—volume monograph in 1990.

Q. And if the Framingham —— because the Framingham study was published in 1990, that means it was relying on data from the 1980s and earlier, correct?

A. Yes, it was.

Q. And you would agree that there's been an enormous amount of medical advances in health care and other advances that have significantly impacted in the positive life expectancy since the '70s and '80s, correct?

A. I object to the use of the word enormous, but I do agree that there have been medical advances.

Q. And that's a fair point. It's a very —— it's in the eye of the beholder what enormous means. So, let me rephrase the question. You would agree that there have been medical advances since the '70s and '80s that have positively impacted life expectancy on all groups, including groups that

Michael Farley would belong to, correct?

A. Yes.

Q. Okay. Dr. Milano, I think it would be a good idea because I don't want to keep you all too late, let's jump to a different cohort that I did not see specifically, I don't think, in your report, and that's the cohort of folks who have unfortunately experienced the same tragedy as Mr. Farley, and that is folks who have locked—in syndrome, do you understand what I mean?

A. Yes.

Q. Okay. Now, have you ever for purposes of this opinion that you're giving in this case, have you looked at any of the studies that have been published in the medical literature about the life expectancies of patients who actually have locked—in syndrome, the actual syndrome that Mr. Farley has?

A. I refreshed my knowledge about locked—in syndrome and the severity of what it means to a patient's well—being, but I did not do that from a life expectancy standpoint.

Q. So, in your field you must be aware of the studies that have been done specifically on the mortality and life expectancies of patients who have

actual locked—in syndrome like Mr. Farley, you're certainly aware that those have been done, correct?

A. Yes.

Q. Okay. Are you familiar with the ——

MR. ALSAFFAR: I'll put this up as exhibit number 8.

(Whereupon, the document referred to by counsel was duly marked for identification as Exhibit #8.)

BY MR. ALSAFFAR:

Q. Are you familiar with the Haig—Katz study that was first done in 1987, following 27 patients who had locked—in syndrome for more than a year? Are you familiar with that study that was published in the Archives of Physical Medicine and Rehabilitation in 1987?

A. No.

Q. Okay. And in this study, if you look at it, I want you to look at it, Doctor, because I think you should. It's studying what we're talking about right now, the mortality of folks with locked—in syndrome like Mr. Farley. So, let's talk about it very quickly.

You see in the first paragraph right

patients? Do you know that?

A. Well, I haven't seen this study, but I saw what I just read.

Q. Okay. So, you're not even aware of this study following for a long-term period patients with locked-in syndrome in order to determine their mortality and life expectancy, you weren't even aware that it existed, were you?

A. I did not see that paper.

Q. I want to show you then and ask you about another paper. I'm showing you exhibit 9.

MR. ALSAFFAR: This is marked as exhibit 9.

(Whereupon, the document referred to by counsel was duly marked for identification as Exhibit #9.)

BY MR. ALSAFFAR:

Q. This is, again, by the same authors, Dr. Katz and Dr. Haig, and this was published in 1992 by the American Congress of Rehabilitation Medicine and the American Academy of Physical Medicine and Rehabilitation. Do you see that, exhibit 9?

A. Yes.

Q. And the title of this is Long-Term

And not only that, he had on concurrent angiograms of his head and neck, middle and distal basilar artery occlusions consistent with embolism and infarctions seen on the MRI on his head.

As bad as locked—in syndrome is, his condition, unfortunately, is much worse than that, as bad as it is.

MR. ALSAFFAR: I have to object to non responsive and move to strike.

Q. Doctor, I'll let you talk because I know you want to, but please listen to the question I ask.

A. What I did was correct what you said.

Q. Doctor, listen to the question I'm asking.

A. If I can, I'll answer it.

Q. Absolutely. That's all I'm asking, sir.

A. But if I hear you make a mistake, I'll correct you as well.

Q. Let's start from the most simple place to start, which is your own report. Is any one of these references that you've cited, do they specifically deal with study or peer reviewed study of groups of people or cohorts of people who specifically have locked—in syndrome?

A. Not in my report.

Now, I think you just told me this, but I don't understand. Why did he discount —— first of all, did he discount by 20 percent? And if so, do you know why?

A. We've had, prior to his demise, we had many discussions about that. Because my discussions would always be ——

MR. ALSAFFAR: I'm going to object to any discussions that allegedly Dr. Milano had with the now deceased Dr. Singer as hearsay; and not admissible and not disclosed in any way in his report.

MR. PLOURDE: With respect to that, I'll have to double check the Rules of Evidence. But I believe that an expert is allowed to rely on hearsay, but that's not the main point.

MR. ALSAFFAR: He's not allowed to rely on unreliable hearsay.

MR. PLOURDE: I understand.

MR. ALSAFFAR: Not of the type that's reasonably relied upon by others in his field. And off hand conversations allegedly had that are not documented anywhere would not qualify.

MR. PLOURDE: I understand. I'm not

C E R T I F I C A T E

COMMONWEALTH OF MASSACHUSETTS
Barnstable, ss
Re: FARLEY, et al. V. USA

I, PAULA E. HOGAN, Notary Public in and for the Commonwealth of Massachusetts, do hereby certify as follows:

1. That ANTHONY F. MILANO, MD, the witness whose testimony is herein before set forth was duly recorded and transcribed by me;

2. That such deposition is a true record of the testimony given by said witness to the best of my knowledge, skill and ability.

3. I further certify that I am neither attorney or counsel for, nor related to or employed by, any of the parties, and further that I am not a relative or employee of any attorney or counsel employed by the parties hereto or financially interested in this matter;

IN WITNESS WHEREOF, I hereunto set my hand and notarial seal this 25th day of September, 2014.

_____
PAULA E. HOGAN,
Notary Public
My Commission Expires:
August 27, 2021